

Application No. 10/564,491
Amendment Dated 4/1/2009
Reply to Office Action of 11/3/2008

REMARKS/ARGUMENTS

By this Amendment, claim 1 is amended. Claims 1, 3-11, 13-20 and 22-30 are pending. No new matter is added.

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, Applicants note that claim 18 has not been rejected, but has not been identified as allowable either. If claim 18 is allowable, or would be allowable if rewritten in independent form, Applicants request a statement to that effect in the next communication from the PTO.

Amendment of Claim 1

Claim 1 is amended to include a clarification with regard to the pivotability of the substrate plates relative to the anchoring axis. According to amended claim 1, the substrate plates can pivot out of the stack in an assembled state of the substrate. This feature is illustrated, e.g., in Figure 1, which shows the assembled state of the substrate and one pivoted substrate plate.

Furthermore, claim 1 defines that at least one of the substrate plates can be laterally removed from the anchoring axis as it is disclosed in the original description as filed (page 4, paragraph 1, lines 4 to 6).

Claim Rejections

Claims 1, 3, (4-5), 6-8, 10, 11, 13-17, 19, 20 and 23-30 stand rejected as allegedly being obvious under 35 U.S.C. § 103(a) over US 6878344 (Mansky) in view of DE 4300231 (Schulz). Claims 9 and 22 stand rejected as allegedly being obvious under 35 U.S.C. § 103(a) over Mansky in view of Schulz, and further in view of US 6699437 (Astle). These rejections are respectfully traversed.

Mansky Fails to Teach All the Claim Limitations

The Mansky reference discloses a testing apparatus with a stack of plates being connected with attachment means 34 (see Fig. 1A reproduced below). The attachment means comprise, e.g., screws or bolts, which extend through the openings 30 at the corners of the plates (column 5, lines 44 to 47). One of the plates, namely the lowest plate 22, is a substrate comprising a plurality of cavities 40 (column 6, lines 7 to 10). The remaining plates do not

represent substrates, but only plates having through openings. These plates are not capable of accommodating any sample as the samples would flow through the openings.

In the assembled state, the plates are connected with the attachments means 34. A fixed connection is provided so that the openings in the plates and the cavities in the lowest plate are aligned relative to each other. It is not intended to provide a rotation of the plates. Any lateral rotation (or pivoting movement) would be blocked by the shape of the plate corners, where protrusions are formed, which are in engagement with recesses in the adjacent plate.

Furthermore, alignment pins 62 and alignment openings 72 are provided for blocking any unintended lateral movement.

Thus, the subject matter of claim 1 is new over the Mansky reference as it does not disclose a stack of substrate plates at all. Except for the lowest plate, there is no further substrate plate disclosed in the Mansky reference. Furthermore, it is immediately clear that the plates of the Mansky apparatus are not adapted and not capable of a pivoting movement in an assembled state of the apparatus. Furthermore, there is no possibility of laterally removing one of the plates without removing the remaining plates.

Schulz Fails to Teach All the Claim Limitations

The Schulz reference discloses a stack of the Petri dishes, which in the assembled state are connected via pivoting links 18, 20. The pivoting links 18, 20 are provided on an outer side of a perimeter wall of the Petri dishes. Separating one of the Petri dishes from the stack is possible by releasing the pivoting links only.

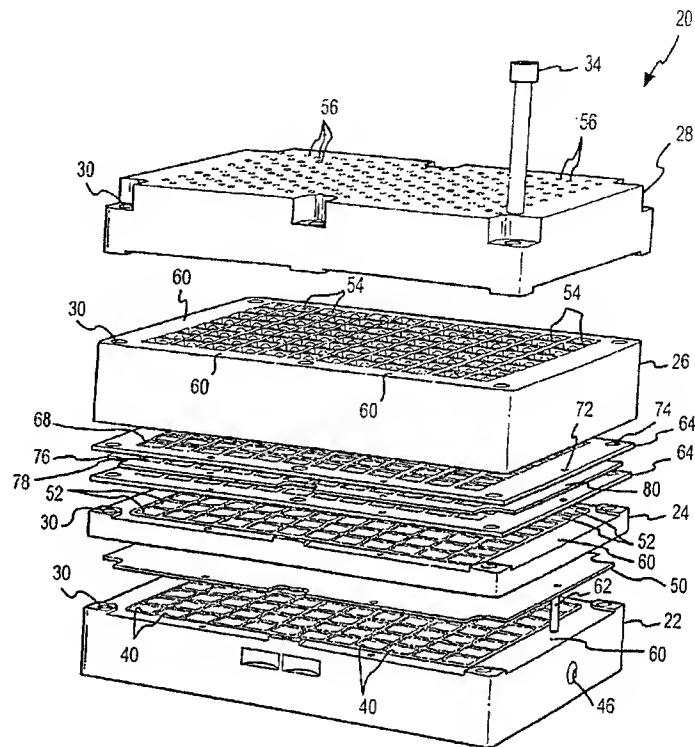


FIG.1A

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Firstly, the subject matter of claim 1 is new over the Schulz reference as Schulz does not disclose a stack of substrate plates, each having a plurality of sample reservoirs. Furthermore, Schulz does not disclose an anchoring axis, to which the substrate plates are connected. Furthermore, Schulz does not disclose a stack of substrate plates, wherein one of the plates can be laterally removed from the anchoring axis without removing the remaining plates.

References not Combinable to Render Claims Obvious

With regard to non-obviousness, it is to be noted that a skilled person would not combine the Schulz and Mansky references as they represent completely different techniques. Contrary to the examiner, a skilled person immediately would recognize that the Mansky reference does not disclose a stack of substrate plates being pivotable relative to an anchoring axis.

Even with the theoretical assumption of a combination of both references, this would not lead in an obvious manner to the claimed invention as the lateral removability of at least one of the substrate plates is not disclosed in any of the documents.

Neither the stack of Petri dishes of Schulz, nor the fixed plate connection of Mansky, gives a suggestion to laterally remove one of the plates out of the stack without removing the remaining plates. Thus, the proposed combination of Mansky and Schulz fails to meet all the features of the claimed invention.

Finally, it is to be noted that the Astle reference represents technological background only, which does not remedy the aforementioned deficiencies of Mansky and Schulz with respect to the claimed invention.

Accordingly, reconsideration and withdrawal of the obviousness rejections are respectfully requested.

For at least the reasons set forth above, it is respectfully submitted that the above-identified application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are respectfully requested.

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Should the Examiner believe that anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

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